

470

38

LETTER  
OF  
HON. JAMES B. FOLEY,  
TO THE PEOPLE OF THE  
FOURTH CONGRESSIONAL DISTRICT OF INDIANA.

---

WASHINGTON, *February* 19, 1859.

FELLOW-CITIZENS: With the close of the present session, the relation I sustain to you, as your Representative in Congress, will cease. Not having addressed you since my election on political topics, either by letter or through the medium of a "buncombe" speech delivered in Congress, I cannot, in justice to myself, permit the occasion of my retirement to pass without addressing you a few words in explanation of the part I have taken in the proceedings of the body of which I am a member, and the votes which I have felt it to be my duty to give on some of the important questions which have agitated the public mind during my term of service. I might, as many have done, have consumed the time of the House in reading to empty seats long written speeches, intended to influence public opinion at home. But, though so many members have set me this example, I could not follow it without doing violence to my sense of the duty of a Representative of the people. I considered my duty to be to *work*, not to *talk*, except when talking might be necessary to advance the interests of my constituents. Acting on this principle, I have published no "speech," as having been delivered in the House, and sent it to you to be used as an electioneering document. I preferred to reserve for the proper occasion, and this direct mode of communication, all that I wished to say to you on the political topics of the day, more particularly such explanations or statements as I might wish to make in reference to the line of conduct I have thought proper to pursue as your Representative, during my brief term of service.

At the time of my election in 1856, the Democratic party, by a great effort, had recovered from the shock it received from the passage of the Kansas-Nebraska act. That measure, though founded on correct principles, being at first greatly misrepresented and misunderstood, was received with much disfavor. The popular manifestations against it in 1854 were overwhelming. In the free States, where it was represented as a measure intended by its author and supporters to extend the area of slavery, the Democracy were beaten in almost every Congressional District. A reaction, however, began soon to take place. An examination of the provisions of the act itself opened the eyes of the people to the soundness of the principles on which it was based. In the great contest of 1856 strenuous efforts were made by the opposition to mislead the popular mind from the

true issues presented; but, notwithstanding these efforts and the continuance of disturbances in the Territory of Kansas—disturbances fomented by political emissaries and hirelings from both sections of the Union—the Democratic party prevailed; James Buchanan became President of the United States; and a Democratic majority was elected, during that fall and the ensuing spring and summer, to the House of Representatives.

Elected your Representative while this memorable contest was yet undecided, when party lines were more closely drawn than perhaps ever before or since; elected by Democratic votes; having from earliest manhood stood by the men and the principles of the Democratic party through good and evil report, in prosperity and adversity, I took my seat at the commencement of the 35th Congress, more determined than ever to adhere to the ancient landmarks by which I had through life shaped my political course. To this determination I was brought, not only by a due regard to my own consistency, but a deep sense of my obligation to those to whom I owed my election. I felt the full force, too, of the pledge impliedly, if not expressly, given while I was a candidate, to support the Administration of our able and distinguished Chief Magistrate, as far as I could do so consistently with my convictions of duty and the principles of the Democratic party, as laid down in the platform adopted by the convention at Cincinnati. Never, I may confidently say, did a Representative take his seat more desirous of sustaining, by his vote and his influence, the policy of the Administration he had helped to bring into power; never was there one more desirous of fulfilling the hopes and expectations of the people, that the action of the President and Congress might be harmonious, and so guided by wisdom and patriotism as to cement and strengthen the Democratic party, and promote the peace and prosperity of the whole country.

The first and second months of the session passed away in the discussion of various measures, some relating to our foreign, some to our domestic affairs. The most important measure acted on during this period was the Treasury note bill, which passed the House on the 22d of December. This was a measure intended to relieve the Government of the embarrassment occasioned by the appropriations of the preceding Congress. Though I would have greatly preferred to see the Government avoid the necessity of having recourse to such expedients for relief, as loans and Treasury notes, I regarded this measure as necessary to disembarass the Administration, by relieving the Government of financial difficulties attending its operations, for which I did not think the Administration could be justly held responsible. As a supporter of the Administration, desirous to remove every obstacle to its success, I felt it to be my duty to waive whatever objections I had to the *precedent* of resorting to this mode of relief, and I accordingly gave the measure my support, believing that in so doing, I was fully carrying out the will of my constituents, and performing an act of justice to the Administration. I am still of the opinion that the measure was justified by the exigencies which it was designed to meet, and I have no cause to regret that I gave it my support.

On the 2d February, a new and most exciting question was presented to the House. On that day the President transmitted to Congress the constitution of Kansas, framed at Lecompton, accompanied by a message recommending its adoption. With the presentation of this document commenced a struggle in both Houses, which continued till near the close of the session—a struggle of absorbing interest not only in Congress, but

throughout the country. In this struggle it was my fortune or misfortune to bear a part, for which I have received my full share of censure from those who condemned, and of applause from those who approved, my course. Now, when the excitement attending the discussion of this subject has, in a great measure passed away, and those who differed as well as those who agreed with me, can review my course calmly and dispassionately, I submit for your consideration a few of the facts which caused me, reluctantly, to oppose the recommendation of the President, and to act with those who were charged (unjustly, I think,) with a design to embarrass and break down the Administration. Certainly, nothing could have been farther from *my* wish than to throw any impediment or difficulty, whatever, in the way of the Administration. I think the same may be said of most, if not all, the Senators and Representatives of the Democratic party who took a course on this question different from that recommended by the President. It was an honest difference of opinion among Democrats. Some honestly thought, with the President, that the best, speediest, and most judicious way to dispose of this most troublesome question was to admit Kansas under the Lecompton constitution. Anxious, as I was, to get rid of the question, I could not bring myself to consider the plan proposed as the proper one. There was abundant evidence to convince me that the Lecompton constitution did not express the will of the people of Kansas. I could not, therefore, give it my support. The fact that it did not embody their will was to me an insuperable objection to its being received. The argument of the President in his message was very able, and there was an earnestness in its tone which left no room to doubt the purity of his motives, and the sincerity of his belief in the correctness of his views; but, with the evidence before me that the instrument in question was not the act and deed of the people of Kansas, I felt convinced that its reception by Congress would lead to evils far greater than any benefits which might possibly accrue from this summary way of disposing of the subject. Some of the evidence which brought my mind to this conclusion I will here state, that you may see whether I acted from a spirit of factious opposition to the President, whom I had helped to elect, or from a deep conviction that I was defending and sustaining the great principle of the right of the people to govern themselves, and resisting what I regarded as a deviation from, if not a palpable violation of, the great principles upheld and defended by my votes at every election for thirty years.

In February, 1857, the Territorial Legislature of Kansas passed an act providing for the election of delegates to a convention to frame a constitution. I will not here enter into a discussion of the question, so warmly debated in Congress, whether the Legislature had the power under the law organizing the territorial government, to pass such an act. On this point there was a great diversity of opinion, some contending that the Legislature had such power under the organic act, while others took the ground that Congress only, by an express law, could authorize the people of Kansas to proceed to the formation of a constitution and State government.

The Territorial Legislature proceeded, it seems, on the idea that the power to call a convention was contained in that clause of the organic act which gave them control over "all rightful subjects of legislation." Under this clause they claimed the right, without waiting for an enabling act from Congress, to take measures for superseding the territorial with a State government—in other words, they claimed that this clause of the organic law

was equivalent to an enabling act, and they accordingly proceeded to take the initiatory steps towards the formation of a State government, as if expressly authorized by Congress so to do.

Among the provisions of the act calling the convention, was one requiring a census to be taken, and a registry to be made of all the qualified voters in the Territory before the election. One copy of the lists of voters, carefully corrected, was to be filed with the Governor; one copy to be delivered to each judge of election; and three copies to be posted up at each place of voting. No person was to be permitted to vote whose name did not appear on such corrected lists. These lists were required to embrace a "full and complete" registry of all the qualified voters, and when complete the apportionment of representation was to be made according to the number of voters in each county.

The sheriffs of the several counties were the officers designated for taking the census and making the registry required by this act. These officers were appointed by the Legislature, and not, as elsewhere, elected by the people.

It was their duty to carry out the provisions of the act, and make a "full and complete" return of all the qualified voters in their respective counties. But this they did not do. On which party the blame of this omission rests, I will not undertake to decide. In several counties there being no sheriffs, of course there was no registry. In the organized counties on the Missouri border, it was charged by the pro-slavery men that the free-state men refused to be registered; while the latter alleged that the sheriffs registered many who were non-residents, and designedly omitted others known to them to be actual residents. It is very certain that, from the refractory conduct of the voters, or the neglect and partiality of the sheriffs, the census and registry in these border counties were not "full and complete," as the law required. Governor Stanton, who made the apportionment of representation on the basis of the returns made to him, remarked afterwards, in a public speech, that if he had known at the time how imperfect and fraudulent the census and registry were, he would have considered it his duty to make no apportionment.

In twenty of the thirty-eight counties of the Territory, there was no census or registry of any of the voters. One reason of this was, that in several of these counties (fourteen I think) there was no county organization, and of course no sheriff to execute the law. If the Legislature did not design to disfranchise these counties, some other person than the sheriff should have been designated to take the census. Every county, large or small, every voter in the Territory, had a right to be heard in the convention. The disfranchisement by the act of the Legislature, or the conduct of the sheriff, of a majority of the counties was pronounced, by the great body of the voters throughout the Territory, to be such an outrage on popular rights that it vitiated the whole proceedings under the act calling the convention. That they should thus refuse to recognize, as their act and deed, a constitution which they considered tainted, in the very first stage of its progress, with fraud, and a total disregard of the rights of the majority, was perfectly natural. It would have been strange indeed, an anomaly in history, if smarting under a sense of wrong, recent and flagrant, they had afterwards become reconciled to the adoption of an instrument attended, in its formation, with circumstances which had excited the strongest feelings of aversion and dislike.

There was one hope left to that portion of the people of Kansas, who

considered themselves disfranchised by the act of February and the proceedings under it. They were promised that the constitution formed at Lecompton should be submitted to a vote of all the people of the Territory, for their ratification or rejection. Mr. Calhoun, afterwards president of the convention, with the other candidates in Douglas county, before the election, had given a written pledge to that effect. Relying on these pledges, the people waited patiently for the action of the convention, determined if the constitution presented were not acceptable, to vote it down. Such an opportunity was not afforded them. The constitution was not submitted, as had been promised. It was presented to the people for their *acceptance*, only, in such a way that if they voted at all, they were compelled to vote for it, and could not vote against it. Every voter was required, also, to swear to support it, before he was allowed to deposit his ballot; and it contained a clause prohibiting any change in its provisions till the year 1864.

In the month of October, 1857, the regular election of the Territorial Legislature and Delegate to Congress took place. At this election the party opposed to the formation of a constitution by the Lecompton Convention, succeeded by an overwhelming majority. Notwithstanding this rebuke from the people, the convention proceeded with their work, formed a constitution, and fixed on the 21st December for ratifying it by a vote of the people. On that day every voter had the privilege of voting for it; none the privilege of voting against it. From the evidence taken before a commission appointed by the Legislature, it appears that great frauds were perpetrated. The reported majority of votes "for the constitution" at this election, was 6,712. Kickapoo and Oxford signalized themselves, as usual, by their immense vote. The former with 315 legal voters, returned 1,017 majority "for the constitution with slavery." The majority at Oxford, a precinct containing only 42 legal voters, was 1,226. I need not explain how these bogus votes were manufactured, as the whole country is already well informed on that point.

The Legislature elected in October having assembled, one of the first acts was to order a vote to be taken, with a view of ascertaining the sense of the people in regard to the Lecompton constitution. This vote was taken on the 4th January, the day fixed by the Lecompton convention for electing State officers. The vote on the 4th January showed a majority of ten thousand against the constitution.

Here was a manifestation of popular sentiment on this subject, about which there could be no mistake. Admitting, for the sake of argument, that all the proceedings under the act of February, 1857, were legal and regular; that no legal form was disregarded in framing the Lecompton constitution at any stage of its progress, from its inception to its consummation; here was a majority of 10,000 of the people of Kansas, repudiating that instrument, and protesting against its being received as their act and deed. Could I longer hesitate, in view of this deliberate declaration of the will of the people of Kansas, what course I should pursue?

When I came here I swore to support the Constitution of the United States. That Constitution says "Congress may admit new States." This is a discretionary power vested in Congress; but there is a limit to the discretion given. The constitution of the State applying for admission must be republican in form, and embody the will of the people. It is a fundamental axiom in our political theory, that all just government among men is derived from the consent of the governed. Where such consent is

withheld, the government established is a usurpation, a despotism. Was such consent given by the people of Kansas to the government attempted to be established over them? I could not view it in that light. Every circumstance went to show that the contrary was the fact, and that the Lecompton constitution, presented here as the expression of the will of the people of Kansas, had no claims whatever to be so regarded, but had been branded, at every stage of its progress, with every mark of popular disapprobation. Less than a majority of the qualified voters of the Territory had taken part in the election of delegates to the convention which framed it; it had been withheld from submission to a vote of the people on the plea that, if submitted, it would be voted down; the Delegate and Legislature elected in October, 1857, had earnestly remonstrated against its being received by Congress as the act and deed of the people of Kansas; frauds unparalleled had notoriously been perpetrated at each election; finally, that all doubt whether this instrument was the act and deed of the people of Kansas might be removed, the Legislature had authorized a vote to be taken on the 4th January—a proceeding not only legal, but, in my judgment, necessary and proper as a means of testing the sense of the people on the subject. The vote showed a majority of ten thousand opposed to the constitution.

With all this evidence before my mind that this constitution did not express the will of the people of Kansas, I felt it to be my duty to oppose it. Some, who admitted that it was repugnant to the wishes and feelings of the people of that Territory, took the ground that if received by Congress, it might subsequently be changed by the people themselves. They said, "admit Kansas as a State, and the majority there will soon frame a constitution to suit themselves." With every disposition to yield to the wishes of others for the sake of harmony, I could see no justice or wisdom in this course. "If it is right," said I, "and if we have the power to fasten this constitution on the people of Kansas for a day or a month, we have the power to fasten it upon them for a year or a much longer period. We become the framers of a constitution for the people of Kansas—nay, we go farther, and force upon them a constitution which they have already repudiated with every mark of disapprobation. Nor can it be changed peaceably, as you suppose. At the election on the 21st December every voter, before depositing his ballot, *was required to swear to support it*; and one of its provisions is that it cannot be changed until 1864. It can only be changed by revolution, strife, bloodshed; and we have had enough of those things in Kansas already."

That there should have been an honest difference of opinion on this question was natural enough. Kansas affairs had occasioned a great deal of trouble and excitement, and all were desirous that the subject should be removed forever from the halls of Congress. None felt this desire more strongly than myself; but, though deeply regretting the necessity of differing with my political associates, I could not see the wisdom or expediency of the course which they advised. The more I reflected, the more I was convinced that, unless the people of Kansas were permitted to declare, in some mode sanctioned by Congress, their wishes in respect to the Lecompton constitution, we should never see law and order established in that Territory, and we should never hear the last of the complaints of those who sought to make political capital out of the alleged wrongs of the people of that Territory. When, therefore, the conference committee of the two Houses reported a bill since known as the "English bill," vir-

tually (as I understood it) submitting the question of the adoption or rejection of the constitution to a vote of the people of Kansas, I gave it my support. In doing so, I think I acted consistently with my former course, and gave the strongest proof of my disposition to make every concession consistent with my convictions of duty for the sake of harmony. One feature of this bill I did not approve. I refer to the clause relating to the population of Kansas as a condition precedent to her admission. I would have been pleased to see this clause stricken out; but I disagreed with those who thought this an insuperable objection to supporting the bill.

An opportunity for settling this vexed question was now presented, I thought, which might not occur again. The people of Kansas might indirectly, if they could not directly, express their sentiments in regard to the Lecompton constitution. The question would thus be transferred from Congress to Kansas, and there probably settled forever. Whatever objections, therefore, I might have to certain features of the bill, regarding it as a peace-offering, a measure which could not fail to be attended with the best results here and in Kansas, I felt it to be my duty to give it my support. I need not add that the result has been all that I expected. During the present session Kansas has hardly been mentioned. Democrats, who differed on this question a year ago, now wonder that they could have been so alienated from each other even for a short time. In Kansas, with the exception of a little "speck of war" in the south part of the Territory, peace and quietness prevail. The people there finding other employment more profitable than making constitutions, are content to wait till the proper time for assuming the burdens of a State government, when they will quietly proceed, as other States have done, to "form and regulate their institutions in their own way, subject only to the Constitution of the United States."

Such, fellow-citizens, briefly stated, are some of the reasons which induced me to resist the passage of the bill for the admission of Kansas, as it originally passed the Senate, and to give my support afterwards to that reported by the conference committee, known as the "English bill." In what I have said, I have endeavored to confine myself to facts, and I have avoided every expression which could be construed into a reproach of those who differed with me. The question presented was one of those on which Democrats might honestly differ. While I claim that I advocated what the result has shown to have been the most judicious mode of disposing of the question, I have no reproaches for those who advocated a different course. I regret that there were some individuals who allowed themselves, while the question was pending, to indulge in coarse and bitter invective towards those who chose to oppose the recommendation of the President, and act in accordance with the dictates of their own judgment. If such persons expected, by this course, to commend themselves to Executive favor, they, of course, have ascertained by this time to what extent they have succeeded. If they expected, by representing me as in an attitude of hostility to the Administration, to drive me into the ranks of the Opposition, they have signally failed. The ties which bind me to the Democratic party are not so easily sundered. Individuals, arrogating to themselves the right to sit in judgment upon the political orthodoxy of as good Democrats as themselves, may pass sentence of excommunication upon such as do not come up to *their* standard of Democracy, but they will find it difficult to execute such sentence on one who, for thirty years, has never wavered or faltered in his devotion to the Democratic cause.

In reviewing my official conduct during the brief period that I have had the honor of a seat in Congress, I can see no act of mine which I have cause to regret, nor have I any reason to shrink from the closest scrutiny of the motives by which I have been actuated. On every important question presented, (among others the Oregon admission bill,) my vote is recorded. I may add that I have not confined my votes to *important* questions only. In my seat every day, I know not how I could have been more diligent and attentive than I have been in the House, besides attending to business in the Departments.

In returning again to private life, I carry with me the consciousness of having endeavored to do all that was expected or required of me by my constituents, and I have the satisfaction of believing that a large majority of them approve my course. I have reason to believe, also, that, without any surrender of principle, any loss of self-respect, I have lost by my course none of the respect and personal good-will of our able and patriotic Chief Magistrate; and that he relies as confidently on me to support the measures of his Administration as on any other Democrat in Congress.

I might here close this brief account of my stewardship. But I must be permitted in candor to add that, though I have no cause to regret any thing I have done, I do regret I have not received such evidence of your approval of my course, as it is usual to give to a Representative who has correctly reflected the will of his constituents. It is an established usage in our State to give to each member a second term, unless he forfeits his claim to a re-election by neglecting his duty, or misrepresenting his constituents. Under ordinary circumstances, I should have felt little concern whether the honor of a re-election was conceded or withheld; whatever reason, founded on long established usage, I might have had to expect it. But the circumstances under which I was set aside were such, that the act of the nominating convention may be construed by persons not informed on the subject, into a verdict of disapprobation on your part of my political course. Having every reason to believe that I would receive from my district a re-nomination and re-election, as an evidence of their approval of my course, the action of the convention somewhat surprised me. I could not see then, and I do not now see, any reason why they should have wished to limit me to a single term.

To the Democracy of the district I look for a redress of the wrong done me by the action of the convention. I shall pursue no disorganizing, factious course to obtain justice. I rely upon you, the Democracy, to give me such endorsement at the proper time as, under similar circumstances, has been conceded to others. At the expiration of another term I should feel it to be my duty to retire. I can say, however, with truth, that whether you desire that I shall remain in retirement from this time, or again serve you another term, I shall always acquiesce without a murmur in a fair expression of your sovereign will. If you think it proper not to place me in a public position, I hope I have not forgotten how to serve as an humble private in the Democratic ranks in sustaining, by my votes and my influence, as far as it goes, those principles on the successful maintenance of which depend the prosperity and happiness of the people, the integrity of the Union, and the preservation and perpetuity of our free institutions.

JAMES B. FOLEY.